

## HOUSE BILL NO. 661

INTRODUCED BY BERGREN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE APPLICATION OF SMOKING LAWS TO VIDEO GAMBLING PREMISES; PROVIDING THAT A BUSINESS THAT IS LICENSED FOR VIDEO GAMBLING MACHINES AND THAT IS SUBJECT TO THE MONTANA CLEAN INDOOR AIR ACT IS NOT SUBJECT TO AN ORDINANCE OR ANY OTHER LOCAL GOVERNMENT POWER RELATING TO CLEAN INDOOR AIR, INCLUDING AN ORDINANCE OR THE EXERCISE OF A POWER RELATING TO SMOKING; PROHIBITING A LOCAL GOVERNMENT FROM ADOPTING A SMOKING ORDINANCE THAT APPLIES TO, AND PROHIBITING A LOCAL GOVERNMENT FROM ENFORCING A SMOKING ORDINANCE AGAINST, A BUSINESS THAT IS LICENSED FOR VIDEO GAMBLING MACHINES AND THAT IS SUBJECT TO THE MONTANA CLEAN INDOOR AIR ACT; REMOVING THE EXEMPTION FROM THE MONTANA CLEAN INDOOR AIR ACT FOR TAVERNS OR BARS WHERE MEALS ARE NOT SERVED; AMENDING SECTIONS 7-1-111, 7-1-120, 50-40-104, AND 50-40-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 7-1-111, MCA, is amended to read:

**"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) any power relating to clean indoor air that applies to or affects a business that is licensed under 23-5-611(1)(a) or (1)(c)."

**Section 2.** Section 7-1-120, MCA, is amended to read:

**"7-1-120. Premises Business with video gambling machines -- local government smoking ordinance no more restrictive than state law prohibited.** ~~An establishment~~ A local government is prohibited from adopting a smoking ordinance that applies to, and is prohibited from enforcing a smoking ordinance

1 ~~against, a business~~ that has been granted a permit under ~~Title 23, chapter 5, part 6~~ 23-5-611(1)(a) or (1)(c), for  
2 the placement of video gambling machines on the business premises ~~is exempt from any local government~~  
3 ~~ordinance that is more restrictive than~~ and that is subject to the provisions of Title 50, chapter 40, part 1."

4  
5 **Section 3.** Section 50-40-104, MCA, is amended to read:

6 **"50-40-104. Designation or reservation of smoking or nonsmoking areas -- notice.** (1) The  
7 proprietor or manager of an enclosed public place, including a business licensed under 23-5-611(1)(a) or (1)(c),  
8 shall:

9 (a) designate nonsmoking areas with easily readable signs;

10 (b) reserve a part of the public place for nonsmokers and post easily readable signs designating a  
11 smoking area;

12 (c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public  
13 stating this designation; or

14 (d) designate and reserve the entire area as a nonsmoking area.

15 (2) The proprietor or manager of an establishment containing enclosed public places, including a  
16 business licensed under 23-5-611(1)(a) or (1)(c), shall post a sign in a conspicuous place at all public entrances  
17 to the establishment stating, in a manner that can be easily read and understood, whether or not areas within  
18 the establishment have been reserved for nonsmokers.

19 (3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which  
20 some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in  
21 subsection (2) in the tavern area of the establishment.

22 (4) THE PROPRIETOR OR MANAGER OF A BUSINESS LICENSED UNDER 23-5-611(1)(C) MAY NOT ALLOW ANY  
23 MEMBER OF THE PUBLIC WHO IS UNDER 18 YEARS OF AGE TO BE PRESENT IN ANY AREA OF THE ESTABLISHMENT IN WHICH  
24 SMOKING IS PERMITTED AND GAMBLING DEVICES ARE PRESENT.

25 ~~(4)(5)~~ The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all  
26 parts of the bus."

27  
28 **Section 4.** Section 50-40-107, MCA, is amended to read:

29 **"50-40-107. Exemptions.** The following ~~shall be~~ are exempt from this part:

30 (1) restrooms;

1       ~~(2) taverns or bars where meals are not served;~~

2       ~~(3)~~(2) vehicles or rooms seating six or fewer members of the public;

3       ~~(4)~~(3) school district buildings and facilities designated as tobacco-free by the board of trustees of the  
4 school district;

5       ~~(5)~~(4) community college buildings or facilities designated as tobacco-free by the board of trustees of  
6 the community college district;

7       ~~(6)~~(5) state government buildings declared smoke-free."  
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9       NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are  
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
11 the part remains in effect in all valid applications that are severable from the invalid applications.  
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13       NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.  
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15       NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the  
16 meaning of 1-2-109, to local government ordinances adopted prior to [the effective date of this act].  
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